H.B. NO. 2421

A BILL FOR AN ACT

RELATING TO PERFORMING ARTS BUSINESSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Hawaii's film, television, and digital media industry is fledgling, but holds much promise for the economic and cultural future of the State. It is a crucial point for the industry, as the industry is currently on the verge of growing immensely but could benefit from appropriate tax incentives to allow it to flourish. Without the State's support, the industry and its workforce will remain in limbo and continue to have an uncertain future. As many other states and foreign countries have already done in recent years, Hawaii should take the opportunity to stimulate the growth of this potential film and digital media industry to the next level--one that will make it a self-sustaining, dependable provider of steady, highly skilled, highly paid twenty-first-century jobs for Hawaii's residents, particularly its youth.

This creates a program that allows the State to purchase certain investment tax credits from performing arts qualified high technology businesses at a deep discount.

The purpose of such a program is to limit the exposure of state funds with respect to certain performing arts qualified high technology businesses, while at the same time enhancing the economic benefits the credits were designed to bring.

While performing arts qualified high technology businesses would still have the option of raising investment and maximizing credit claims, the option to transfer credits back to the State is an attractive alternative because it is direct, guaranteed, hassle-free, and, in most cases, a better deal for the qualified high technology businesses and the State.

Currently, only about 10-15 per cent of investment dollars are going back to the performing arts qualified high technology businesses in the form of investment tax credits, with the majority of the credits going to middleman investors. The state buy-back program ensures that credits go back to the performing arts qualified high technology businesses they were meant to stimulate, thereby directly benefiting them. By merely redirecting the way credits are issued, the State can reap better economic benefits (stimulating more productions) at likely lower costs.

The program would also help to redirect a higher percentage of local investment dollars toward smaller, independent performing arts qualified high technology businesses and other types of qualified high technology businesses whose ability to remain in business relies greatly on investment dollars stimulated by the credit.

Finally, this Act requires a production partaking of the buy-back program to contribute 0.5 per cent of its aggregate qualified investments to the Hawaii television and film development special fund, for the purpose of directly funding local projects that further the development of the local film and television industry.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235-   Transferability of the high technology business investment tax credit.** (a) Any taxpayer entitled to tax credits under section 235-110.9 based on an investment in a "performing arts qualified high technology business" may elect to treat the credits as earned by the performing arts qualified high technology business. The election must be made for all of the credits earned over the five-year period provided in section 235-110.9. The election must be filed with the tax return for the "performing arts qualified high technology business" and the taxpayer's tax return for the taxable year that the taxpayer made the investment.

(b) Any performing arts qualified high technology business for which an election under subsection (a) has been made may transfer the tax credits provided in section 235-110.9 to the department of taxation for twenty per cent of the face value of the credits earned, paid over five years pursuant to the pay-out schedule established in section 235-110.9. The maximum allowed credits per taxpayer set forth by section 235-110.9 shall not apply to credits transferred pursuant to this section.

(c) To qualify to transfer the tax credits to the department of taxation as provided in subsection (b):

(1) All taxpayers who have made an investment in the performing arts qualified high technology business during the taxable year of the qualified high technology business must elect to treat the credits as earned by the performing arts qualified high technology business; and

(2) The performing arts qualified high technology business must transfer all of the credits that it is treated as earning to the department of taxation.

(d) Any performing arts qualified high technology business or related entity that has transferred any credits to the department of taxation pursuant to subsection (b) in a given taxable year must also sell or waive the motion picture and film production income tax credit set forth in section 235-17 and the capital goods excise tax credit set forth in section 235-110.7 in that same taxable year in the manner provided in subsection (b).

(e) Prior to making an election under subsection (a), the performing arts qualified high technology business shall apply to the director of taxation for approval of such election. The director of taxation shall approve all qualifying elections to transfer credits under this section in the order that such requests for approval are received by the director of taxation; provided that the director of taxation shall only approve qualifying elections to transfer credits under this section for the first $25,000,000 in the aggregate paid to all performing arts qualified high technology businesses making elections under this section in any year. In any year, elections approved requiring the department of taxation to pay less than $25,000,000 in the aggregate to all performing arts qualified high technology businesses, the excess revenue may be carried over and applied to subsequent years.

(f) This section shall not apply to any investments which are part of a transaction, or series of transactions, structured to avoid the purposes of this section so that a production could utilize both this section, section 235-110.9, section 235-17, or section 235-110.7.

(g) To qualify to transfer tax credits to the department of taxation pursuant to subsection (b), a performing arts qualified high technology business shall contribute 0.5 per cent of its aggregate qualified investments to the Hawaii television and film development special fund set forth in Section 201-113.

(h) Every performing arts qualified high technology business, on or before March 31 of each year in which credits are to be transferred for the previous taxable year, shall submit the following to the department of business, economic development, and tourism:

(1) A check for the contribution to the Hawaii television and film development special fund, equal to 0.5 per cent of its aggregate qualified investments in the previous taxable year, pursuant to subsection (f);

(2) The total amount of qualified research costs per project per taxable year; and

(3) The number of total hires versus the number of local hires by category, such as department, and by county, per project per taxable year.

(i) For purposes of this section:

"Aggregate qualified investments" means the amount invested by all the taxpayers who have made an election under subsection (a).

"Performing arts products" means the same as defined in section 235-7.3.

"Performing arts qualified high technology business" means a qualified high technology business whose "qualified research" consists solely of "performing arts products."

"Qualified high technology business" means the same as defined in section 235-110.9.

"Qualified research" means the same as defined in section 235-7.3."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2006.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 23 2006

H.B. NO. 2421

JUSTIFICATION SHEET

DEPARTMENT:	Taxation
TITLE:	A BILL FOR AN ACT RELATING TO PERFORMING ARTS BUSINESSES.
PURPOSE:	To allow the transferability of high technology business investment tax credits for performing arts qualified high technology businesses (QHTBs). Specifically, to establish a program by which the state could buy back such tax credits from these QHTBs at deeply discounted rate: 20% of the face value of the credits distributed over 5 years. Also, to require performing arts QHTBs using this program to contribute .5 percent of their aggregate qualified investments per year to the Hawaii television and film development special fund.
MEANS:	Add a new section to chapter 235, Hawaii Revised Statutes.
JUSTIFICATION:	Hawaii's film, television, and digital media industry is fledgling, but holds much promise for the economic and cultural future of the state. It is a crucial time for the industry, as it is currently primed for growth, but needs an extra push from the state to allow it to flourish. Without the state's support, the industry and its workforce will remain in limbo and continue to have an uncertain future. As many other U.S. states and foreign countries have already done in recent years, Hawaii should take the opportunity to stimulate the growth of the film and digital media industry to the next level--one that will make it a self-sustaining, dependable provider of steady, highly skilled, highly paid 21st-century jobs for Hawaii's residents, particularly its youth.

The purpose of such a program is to limit the exposure of state funds with respect to certain performing arts QHTBs, while at the same time enhancing the economic benefits the credits were designed to bring. As part of limiting

H.B. NO. 2421

the exposure of state funds, the program provides for a $25,000,000 cap on the amount paid to performing arts QHTBs on a first-come-first-served basis for any tax year.

Currently, only about 10-15 percent of investment dollars are going back to the performing arts QHTBs in the form of investment tax credits, with the majority of the credits going to middleman investors. The state buy-back program ensures that credits go back to the performing arts QHTBs they were meant to stimulate, thereby directly benefiting them. By merely redirecting the way credits are issued, the state can reap better economic benefits (stimulating more productions) at no greater cost (and possibly at a lower cost).

The program would also help to redirect a higher percentage of local investment dollars toward smaller, independent performing arts QHTBs and other types of QHTBs whose ability to remain in business relies greatly on investment dollars stimulated by the credit.

Finally, the initiative calls for a monetary contribution to the Hawaii Television and Film Development Special Fund from performing arts QHTBs utilizing the buy-back program. The contribution would equal 0.5 percent of the QHTB's aggregate qualified investments in the previous taxable year. This special fund can then be used to directly fund local projects that further the development of the local film and television industry.

<u>Impact on the public:</u> The public has been very supportive of the film, television, and digital media industry because it is a clean, progressive industry that augments Hawaii's economy by providing highly skilled, highly paid jobs, support for local businesses that service productions, and opportunities for our young people.

Furthermore, film, television, and digital media products often serve as highly visible ambassadors for the state. Productions such as

HB 2421

"Blue Hawaii," "Magnum P.I.," "Hawaii Five-O," and most recently, the Emmy-winning "Lost," have generated significant promotion for Hawaii and have helped draw visitors to the state.

Any pro-industry measures taken by the administration and the legislature would be viewed by the public as forward-thinking and embracing of economic and cultural progress. Hawaii would be viewed by residents and visitors alike as a hospitable environment not only for the production business, but for other local industries on which productions depend, including hotel, transportation, food, equipment, communications, and consumer goods.

Impact on the department and other agencies: This state buy-back program would encourage production and help Hawaii build a sustainable self-sufficient film, television, and digital media industry. In turn, this would augment the department's and the state's ability to attract further business, grow jobs and opportunities, market the state, and diversify the economy. Furthermore, this program would benefit the Department and the state as a whole because it is designed to save money.

GENERAL FUND:	Will result in revenue gain of $9.0 million in FY-07; $7.4 million in FY-08; $6.1 million in FY-09; $5.4 million in FY-10; and $4.8 million in FY-11.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None
OTHER AFFECTED AGENCIES:	Department of Business, Economic Development, and Tourism.
EFFECTIVE DATE:	July 1, 2006.